

AMENDED IN ASSEMBLY JULY 2, 1998

AMENDED IN ASSEMBLY JUNE 10, 1998

AMENDED IN SENATE APRIL 21, 1998

AMENDED IN SENATE APRIL 1, 1998

AMENDED IN SENATE FEBRUARY 10, 1998

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**SENATE BILL****No. 1360**

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**Introduced by Senators Alpert, Peace, Solis, and Watson**

(Coauthors: Assembly Members Alquist, Davis, Havice,  
Kuehl, Leach, Murray, Pacheco, Thomson, and Wayne)

January 5, 1998

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An act to amend Sections 7100 and 7100.1 of the Health and Safety Code, and to amend Section 7600.6 of the Probate Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

SB 1360, as amended, Alpert. Human remains: disposition.

Existing law lists the person or persons who may, in a specified order of succession, control the disposition of the remains of a deceased person if other directions have not been given by the decedent.

This bill would provide that if the person to whom right of control has vested under those provisions has been charged with first or second degree murder or *voluntary* manslaughter in connection with the decedent's death, the right of control over the disposition of the remains of the deceased person is relinquished and passed on to the next of kin in accordance

with those provisions. The bill would also add to and revise the list of persons who may control the disposition of the remains of a deceased person pursuant to these provisions.

Existing law requires a funeral director or cemetery authority in control of the decedent's remains to notify the public administrator if certain persons with the right to control the disposition of the remains cannot be found after reasonable inquiry or cannot be contacted by reasonable means.

This bill would delete the reference to the cemetery authority with regard to this notice requirement.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7100 of the Health and Safety  
2 Code is amended to read:

3 7100. (a) The right to control the disposition of the  
4 remains of a deceased person, the location and conditions  
5 of interment, and arrangements for funeral goods and  
6 services to be provided, unless other directions have been  
7 given by the decedent pursuant to Section 7100.1, vests in,  
8 and the duty of disposition and the liability for the  
9 reasonable cost of disposition of the remains devolves  
10 upon, the following in the order named:

11 (1) An attorney-in-fact under a durable power of  
12 attorney for health care executed pursuant to Chapter 1  
13 (commencing with Section 4600) of Part 4 of Division 4.5  
14 of the Probate Code.

15 (2) The surviving spouse.

16 (3) The sole surviving adult child of the decedent, or  
17 if there is more than one adult child of the decedent,  
18 one-half or more of the surviving adult children.  
19 However, less than one-half of the surviving adult  
20 children shall be vested with the rights and duties of this  
21 section if they have used reasonable efforts to notify all  
22 other surviving adult children of their instructions and  
23 are not aware of any opposition to those instructions on  
24 the part of more than one-half of all surviving adult

1 children. For purposes of this section, “adult child” means  
2 a competent natural or adopted child of the decedent  
3 who has attained 18 years of age.

4 (4) The surviving parent or parents of the decedent.  
5 If one of the surviving parents is absent, the remaining  
6 parent shall be vested with the rights and duties of this  
7 section after reasonable efforts have been unsuccessful in  
8 locating the absent surviving parent.

9 (5) The surviving competent adult person or persons  
10 respectively in the next degrees of kindred. If there is  
11 more than one surviving person of the same degree of  
12 kindred, the majority of those persons. Less than the  
13 majority of surviving persons of the same degree of  
14 kindred shall be vested with the rights and duties of this  
15 section if those persons have used reasonable efforts to  
16 notify all other surviving persons of the same degree of  
17 kindred of their instructions and are not aware of any  
18 opposition to those instructions on the part of one-half or  
19 more of all surviving persons of the same degree of  
20 kindred.

21 (6) The public administrator when the deceased has  
22 sufficient assets.

23 (b) (1) If any person to whom the right of control has  
24 vested pursuant to subdivision (a) has been charged with  
25 first or second degree murder or *voluntary* manslaughter  
26 in connection with the decedent’s death and those  
27 charges are known to the funeral director or cemetery  
28 authority, the right of control is relinquished and passed  
29 on to the next of kin in accordance with subdivision (a).

30 (2) If the charges against the person are dropped, or  
31 if the person is acquitted of the charges, the right of  
32 control is returned to the person.

33 (3) Notwithstanding this subdivision, no person who  
34 has been charged with first or second degree murder or  
35 *voluntary* manslaughter in connection with the  
36 decedent’s death to whom the right of control has not  
37 been returned pursuant to paragraph (2) shall have any  
38 right to control disposition pursuant to subdivision (a)  
39 which shall be applied, to the extent the funeral director

1 or cemetery authority know about the charges, as if that  
2 person did not exist.

3 (c) A funeral director or cemetery authority shall have  
4 complete authority to control the disposition of the  
5 remains, and to proceed under this chapter to recover  
6 usual and customary charges for the disposition, when  
7 both of the following apply:

8 (1) Either of the following applies:

9 (A) The funeral director or cemetery authority has  
10 knowledge that none of the persons described in  
11 paragraphs (1) to (6), inclusive, of subdivision (a) exists.

12 (B) None of the persons described in paragraphs (1)  
13 to (6), inclusive, of subdivision (a) can be found after  
14 reasonable inquiry, or contacted by reasonable means.

15 (2) The public administrator fails to assume  
16 responsibility for disposition of the remains within seven  
17 days after having been given written notice of the facts.  
18 Written notice may be delivered by hand, U.S. mail,  
19 facsimile transmission, or telegraph.

20 (d) The liability for the reasonable cost of final  
21 disposition devolves jointly and severally upon all kin of  
22 the decedent in the same degree of kindred and upon the  
23 estate of the decedent. However, if a person accepts the  
24 gift of an entire body under subdivision (a) of Section  
25 7155.5, that person, subject to the terms of the gift, shall  
26 be liable for the reasonable cost of final disposition of the  
27 decedent.

28 (e) This section shall be administered and construed to  
29 the end that the expressed instructions of the decedent  
30 or the person entitled to control the disposition shall be  
31 faithfully and promptly performed.

32 (f) A funeral director or cemetery authority shall not  
33 be liable to any person or persons for carrying out the  
34 instructions of the decedent or the person entitled to  
35 control the disposition.

36 (g) For purposes of paragraph (5) of subdivision (a),  
37 “competent adult” means an adult who has not been  
38 declared incompetent by a court of law or who has been  
39 declared competent by a court of law following a  
40 declaration of incompetence.

1 SEC. 2. Section 7100.1 of the Health and Safety Code  
2 is amended to read:

3 7100.1. (a) A decedent, prior to death, may direct, in  
4 writing, the disposition of his or her remains and specify  
5 funeral goods and services to be provided. Unless there is  
6 a statement to the contrary that is signed and dated by the  
7 decedent, the directions may not be altered, changed, or  
8 otherwise amended in any material way, except as may  
9 be required by law, and shall be faithfully carried out  
10 upon his or her death, provided both of the following  
11 requirements are met: (1) the directions set forth clearly  
12 and completely the final wishes of the decedent in  
13 sufficient detail so as to preclude any material ambiguity  
14 with regard to the instructions; and, (2) arrangements for  
15 payment through trusts, insurance, commitments by  
16 others, or any other effective and binding means, have  
17 been made, so as to preclude the payment of any funds  
18 by the survivor or survivors of the deceased that might  
19 otherwise retain the right to control the disposition.

20 (b) In the event arrangements for only one of either  
21 the cost of interment or the cost of the funeral goods and  
22 services are made pursuant to this section, the remaining  
23 wishes of the decedent shall be carried out only to the  
24 extent that the decedent has sufficient assets to do so,  
25 unless the person or persons that otherwise have the right  
26 to control the disposition and arrange for funeral goods  
27 and services agree to assume the cost. All other provisions  
28 of the directions shall be carried out.

29 (c) If the directions are contained in a will, they shall  
30 be immediately carried out, regardless of the validity of  
31 the will in other respects or of the fact that the will may  
32 not be offered for or admitted to probate until a later  
33 date.

34 SEC. 3. Section 7600.6 of the Probate Code is  
35 amended to read:

36 7600.6. A funeral director in control of the decedent's  
37 remains pursuant to subdivision ~~(b)~~ (c) of Section 7100  
38 of the Health and Safety Code shall notify the public  
39 administrator if none of the persons described in  
40 paragraphs (2) to (6), inclusive, of subdivision (a) of

1 Section 7100 of the Health and Safety Code exist, can be  
2 found after reasonable inquiry, or can be contacted by  
3 reasonable means.

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